

AGREEMENT

THIS PROFESSIONAL SERVICE CONTRACT, made and entered into by and between **THE GREATER LOUISVILLE WORKFORCE INVESTMENT BOARD, d/b/a KentuckianaWorks, 410 W. Chestnut Street, Suite 200, Louisville, Kentucky 40202** (hereinafter referred to as "KentuckianaWorks"), and the **UNIVERSITY OF LOUISVILLE RESEARCH FOUNDATION, INC.**, with offices located at University of Louisville, Louisville KY 40292, ("**CONSULTANT**").

WITNESSETH:

WHEREAS, KentuckianaWorks is in need of certain professional services with regard to research projects, including occupational projections, web site development and measures of brain gain/drain; and

WHEREAS, these projects relate to KentuckianaWorks' web site and its Occupational Outlook and Human Capital Scorecard sections; and

WHEREAS, the Consultant has been determined by KentuckianaWorks to have the necessary experience, expertise and qualifications to provide those services;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

I. SCOPE OF PROFESSIONAL SERVICES

A. Consultant shall, at the request of KentuckianaWorks, provide services under the terms of this Agreement. KentuckianaWorks may review the Consultant's work product from time to time for purposes of determining that the services provided are within the scope of this Agreement.

B. Consultant, while performing the services rendered pursuant to this Agreement, may utilize agents or employees of such Consultant. However, such use must be documented in the monthly invoice submitted for those services.

C. If from time to time Consultant needs to utilize the records or personnel of KentuckianaWorks in performing the services required in this Agreement, then Consultant shall notify the proper agent of KentuckianaWorks and arrangements may be made to provide the necessary records or personnel. However, at no time shall KentuckianaWorks make available its resources without the full consent of both parties.

D. The services of Consultant shall include but not be limited to the following:

1. Consultant will continue to update employment projections, by industry and occupation for KentuckianaWorks Occupational Outlook on KentuckianaWorks' web site, using the latest projections from the U. S. Bureau of Labor Statistics for fast growing occupations and staffing patterns through 2014. Consultant will update regional employment data, perform shift-share analysis, and revise local projections for the web-based outlook product Consultant developed previously. Consultant has acquired a set of NAICS-based estimates of employment by detailed industry by year, and these will be used to modify the estimates of local occupations. Consultant will acquire fresh data on wages by occupations, skills data from O*NET, and other components of the Occupational Outlook. Consultant will deliver a revised database during the term of this contract.
2. Consultant will continue to update the Human Capital Scorecard. Consultant will utilize metropolitan area estimates of educational attainment from the Census Bureau's American Community Survey results. Consultant will obtain, organize, and display the results for Louisville and its 15 comparison metros. Consultant will also obtain two more years of data on GED completions, and Consultant will be purchasing the zip code-based data for all comparison metros from the American Council on Education.
3. Consultant will perform such other research as deemed necessary by the KentuckianaWorks Board of Directors.

E. KentuckianaWorks is granted a license to use all work product and deliverables produced by Consultant in carrying out this agreement for posting on its

Web site and in its publications and brochures and other internal use by KentuckianaWorks. KentuckianaWorks agrees to include with any Web posting or subsequent publication of the work product and deliverables provided by Consultant that contains the ACE's GED test data with a statement as follows: "Source: 2007 GED(r) Testing Service Data."

II. FEES AND COMPENSATION

A. Consultant shall be reimbursed for professional services rendered according to the terms of this agreement. Total compensation payable to Consultant for services rendered pursuant to this agreement, including out-of-pocket expenses, shall not exceed the sum of **\$ 40,000.00**.

B. Unless otherwise agreed in writing by KentuckianaWorks, services shall be rendered and payment shall be made per completed project. Payment shall only be made pursuant to a detailed invoice presented at the end of each project, which invoice shall indicate a descriptive accounting of the hours expended in service under the contract, the particular nature of such service and out-of-pocket expenses. Copies of invoices or receipts for out-of-pocket expenses and other third party charges must be included with the Consultant's invoice when payment is requested.

C. Consultant shall only be reimbursed out-of-pocket expenses if such expenses are reasonable in amount and necessary to accomplish the scope of services of this contract. KentuckianaWorks will not reimburse first class airfare, personal phone calls, short term parking expenses, or other premium type expenses.

KentuckianaWorks reserves the right to reduce or disallow expenses considered excessive or unnecessary under this contract.

D. Consultant, to the extent that it provides the same or related services to third parties agrees to pro-rate its billings and out-of-pocket expenses to KentuckianaWorks which are of benefit to the third parties and to provide documentation to all parties to verify the pro-ration of such billings and expenses. In no event will KentuckianaWorks pay bills or expenses, which are considered to be double billing (i.e. billing two different parties for the same work or expense).

III. DURATION

A. This is a professional service contract, which shall begin on July 1, 2009 and shall continue through and including June 30, 2010.

B. This Agreement may be terminated without cause by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. In the event of termination without cause, payment for services complete up to and including date of termination shall be based upon work completed at the rates identified in this Agreement.

C. This Agreement may be terminated at any time for cause by KentuckianaWorks upon breach of any provision of this Agreement by Consultant. KentuckianaWorks shall provide written notice of termination to Consultant specifying the termination date and time. If KentuckianaWorks terminates this Agreement for cause, KentuckianaWorks shall have the right to withhold any payments due under this

Agreement and KentuckianaWorks may pursue its remedies in law or equity through all appropriate legal action.

IV. EMPLOYER/EMPLOYEE RELATIONSHIP

It is expressly understood that no employer/employee relationship is created by this agreement nor does it cause Consultant to be an officer or official of KentuckianaWorks. By executing this agreement, the parties hereto certify that Consultant's performance will not constitute or establish a violation of any statutory or common law principle pertaining to conflict of interest, nor will it cause unlawful benefit or gain to be derived by either party.

V. RECORDS-AUDIT

Consultant shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Consultant's fees and costs which are chargeable to KentuckianaWorks under this Agreement; and KentuckianaWorks shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it.

VI. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

Consultant and the University of Louisville (U of L), as agencies of the Commonwealth of Kentucky, although vested with sovereign immunity, are subject to the Board of Claims Act, KRS 44.070-44.160. Claims against Consultant and U of L

relating to personal injury or property damage may be filed and decided under the provisions of the Act. To the extent permitted by that Act and other applicable law, the Consultant, as agent for the University of Louisville for receiving grants and research agreements from external funding sources, shall defend, indemnify and hold harmless KentuckianaWorks and the Louisville/Jefferson County Metro Government from and against any and all claims which may result from any error or omission arising out of Consultant's and U of L's performance under this Agreement.

VII. REPORTING OF INCOME

The compensation payable under this Agreement is subject to federal, state and local taxation. Regulations of the Internal Revenue Service require KentuckianaWorks to report all amounts in excess of \$600.00 paid to non-corporate contractors. Consultant agrees to furnish KentuckianaWorks with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Consultant further agrees to provide such other information to KentuckianaWorks as may be required by the IRS or the State Department of Revenue.

VIII. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kentucky. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations

arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

IX. AUTHORITY

The Consultant, by execution of this Agreement, does hereby warrant and represent that it is qualified to do business in the State of Kentucky, and has full right, power and authority to enter into this Agreement.

X. CONFLICTS OF INTEREST

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

- (a) He, or any member of his immediate family has a financial interest therein; or
- (b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or
- (c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party.

Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

XI. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto.

XII. SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

XIII. SEVERABILITY

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

XIV. COUNTERPARTS

This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

XV. CALCULATION OF TIME

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, Consultant is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

XVI. CAPTIONS

The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

XVII. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS

The Consultant shall reveal any final determination of a violation by the Consultant or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or

subcontractor. The Consultant shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or subcontractor for the duration of the contract.

XVIII. OCCUPATIONAL HEALTH AND SAFETY

Consultant agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, 29 U.S.C. 650 *et. seq.*, as amended, and KRS Chapter 338. Consultant also agrees to notify KentuckianaWorks and the Louisville/Jefferson County Metro Government in writing immediately upon detection of any unsafe and/or unhealthful working conditions detected at any Metro-owned property where Consultant performs work under this Agreement. Consultant agrees to the extent permitted by law to indemnify, defend and hold KentuckianaWorks and the Louisville/Jefferson County Metro Government harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

WITNESS the signatures of the parties to this Agreement.

APPROVED AS TO FORM:
MICHAEL J. O'CONNELL

by Ed Lowry
Edwin J. Lowry, Jr.
Assistant Jefferson County Attorney
Date: 6/1/09

KENTUCKIANAWORKS

By: M. B. G. G. G.

Title: Executive Director

Date: 6/8/09

UNIVERSITY OF LOUISVILLE Research Foundation, Inc. (9)

By: Barbara Sells

Barbara Sells 091434 (9)
Title: Senior Grants Management Specialist

Date: 6/5/09

Taxpayer Identification No.
(TIN): _____

Louisville/Jefferson County
Revenue Commission Account
No.: _____

WRITTEN FINDINGS University of Louisville - Paul Coomes KentuckianaWorks 2009-10**EXPLAINING NECESSITY FOR USING NONCOMPETITIVE NEGOTIATION FOR PSC**

This document constitutes written request and findings, as required by KRS 45A.380 stating the need to purchase through noncompetitive negotiation for PSC Contract # _____. By the signatures listed below, the Requesting Department has determined, and the Chief Financial Officer concurs, that competition is not feasible because:

_____ A. An emergency exists which will cause public harm as a result of the delay in competitive procedures. **** Mayors Approval required for emergency purchases exceeding \$10,000.**

_____ B. There is a single source within a reasonable geographic area of the supply or service to be procured or leased (attach sole source determination from the Purchasing Department).

 X C. The contract is for the services typically provided by a licensed professional, such as an attorney, architect, engineer, physician, certified public accountant, registered nurse, or educational specialist; a technician such as a plumber, electrician, carpenter, or mechanic; an artist such as a sculptor, aesthetic painter, or musician; or a non-licensed professional such as a consultant, public relations consultant, advertising consultant, developer, employment department, construction manager, investment advisor, or marketing expert and the like.

_____ D. The contract is for the purchase of perishable items purchased on a weekly basis, such as fresh fruits, vegetables, fish, or meat.

_____ E. The contract is for replacement parts where the need cannot reasonably be anticipated and stockpiling is not feasible.

_____ F. The contract is for proprietary items for resale.

_____ G. The contract or purchase is for expenditures made on authorized trips outside the boundaries of the city.

_____ H. The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids.

_____ I. The contract is for group life insurance, group health and accident insurance, group professional liability insurance, worker's compensation insurance, or unemployment liability insurance.

_____ J. The contract is for a sale of supplies at reduced prices that will afford a purchase at savings to the Metro Government.

_____ K. The contract was solicited by competitive sealed bidding and no bids were received from a responsive and responsible bidder.

_____ L. Where, after competitive sealed bidding, it is determined in writing that there is only one (1) responsive and responsible bidder.

Requesting Department Director

Date

Cabinet Secretary

(When required by cabinets policy)

Date

**Mayor

Date

****Signature is required only for Written Finding A**

CONTRACT DATA SHEETPSC Type (check one): ☒ New ☐ Renewal ☐ Addendum**Contractor Information**

1. Legal Name of Contractor: University of Louisville
2. Address: Jouett Hall, 2301 South Third Street
3. City/ State & Zip: Louisville, KY 40208
4. Contact Person Name & Telephone Number: Paul Coomes 852-5555
5. Revenue Commission Taxpayer ID#:
6. If registration is not required please explain:
7. Is account in good standing: Yes
8. Federal Tax ID # (SSN if sole proprietor):


Department Information


9. Requesting Department: Workforce Investment Board, dba KentuckianaWorks
10. Contact Person Name & Telephone: J. Michael Dunbar 574-4725

Contract Information

11. Not to exceed amount: \$40,000
12. Are expenses reimbursed? Yes
13. If yes list allowable expenses and maximum amount reimbursable: Limited to data acquisition.
14. Beginning and ending date of the contract: 7-1-09 through 6-30-10.
15. Coding: 2551 -505 -2031 -203630-521301
16. Scope & Purpose of the contract: Updates and enhancements to KentuckianaWorks' web-based Occupational Outlook and Human Capital Scorecard.

Authorizations

 County Attorney Review - Approved as to Form: _____

Department Director:  Date: 6/9/09

Signature certifies:

<input checked="" type="checkbox"/>	Funds are available
<input checked="" type="checkbox"/>	Contractor is registered and in good standing with the Revenue Commission
<input checked="" type="checkbox"/>	Human Relations Commission registration requirements have been met

_____ Risk Management Division of Finance - Certifies Insurance requirements satisfied:

Cabinet Secretary : _____ Date: _____
(If applicable)

RESOLUTION NO. _____, SERIES 2009

A RESOLUTION PURSUANT TO THE CAPITAL AND OPERATING BUDGET ORDINANCES, APPROVING THE APPROPRIATION TO FUND THE FOLLOWING NONCOMPETITIVELY NEGOTIATED RENEWAL PROFESSIONAL SERVICE CONTRACT – (University of Louisville - \$40,000.00).

Sponsored By: _____

BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: The following appropriation for the listed contract is hereby approved:

KENTUCKIANAWORKS

\$40,000.00 for a noncompetitively negotiated renewal Professional Service Contract with the University of Louisville Research Foundation, Inc., for research projects, including occupational projections, web site development and measures of brain gain/drain, from July 1, 2009 to June 30, 2010.

SECTION II: This Resolution shall take effect upon its passage and approval.

Kathleen J. Herron
Metro Council Clerk

David W. Tandy
President of the Council

Jerry E. Abramson
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. O'CONNELL
Jefferson County Attorney

BY: _____